

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6964 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD

Versus

KANJI NARAN HARIJAN

Appearance:

MS LILU K BHAYA for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/12/1999

ORAL JUDGEMENT

1. This is an appeal under Section 173 of the Motor

Vehicles Act, at the instance of the Insurance Company, (original opponent no.3) in the claim petition filed under Section 163-A of the Motor Vehicles Act by the injured. Learned Counsel for the appellant first attempted to persuade us on the merits and quantum of the award as being excessive. However, on the facts of the case, we find that the income of the claimant is established from proper documentary evidence on record inasmuch as he is a Government servant being an employee of the Forest Department. On the basis of the documentary evidence on record, and particularly, the medical evidence and the medical certificate, the Tribunal has firstly noted the opinion of the Doctor that the injuries sustained by the claimant amounted to disability of 60% of the body as a whole. However, on other evidence, and particularly, looking to the First Schedule under the Workmens' Compensation Act as merely a guideline, the Tribunal has found on a prima facie basis, and at that interim stage, that the physical disability which is likely to affect the earning capacity of the claimant is only at the rate of 20%. So far as the age of the claimant is concerned at 39 years, the multiplier is adopted as per the Second Schedule of the Motor Vehicles Act, 1988. Thus, on the facts of the case, we are satisfied that, so far as quantum is concerned and the computation for loss of earning capacity is concerned, the same is not in any manner excessive.

1.1 The Tribunal has also noted that although the applicant has incurred medical expenses as per the medical bills produced on record amounting to Rs.21,923/-, at this stage, (under Section 163A) not more than Rs.15,000/- can be awarded. Furthermore, the Tribunal has awarded only Rs.5000/- towards pain, shock and suffering. Under the circumstances, we find that, the quantification of compensation cannot, in any manner, be said to be excessive.

2. Furthermore, we note that the application under Section 163A was an interim application at Exh.20 in the substantive claim petition being M.A.C.P. no.674/97, which is as yet pending. The claim in the substantive petition under Section 166 was originally Rs.5,00,000/which was amended and raised to Rs.14,00,000/- and odd. Thus, the present award under Section 163A being Rs.1,97,600/- is a very small proportion of the pending claim in the main petition.

3. It is obvious that, as and when, the main petition is decided, any amount which may be granted to the claimant in the said petition shall be subject to

adjustment against the present award under Section 163A. This position is also acceptable to the original claimant and so stated by his learned Counsel before us. It is accordingly found and held that the present award shall be subject to adjustment against the final award in the main petition filed under Section 166 of the said Act.

4. The amount deposited in the Registry shall be transmitted to the Tribunal forthwith.

4.1 The balance of the amount due under the impugned judgment and award shall be deposited within six weeks from today. On the deposit being made, 60% of the amount deposited shall be released in favour of the claimant with security, and the balance of 40% on the claimant furnishing security to the satisfaction of the Tribunal. However, before any amount is permitted to be withdrawn by the original claimant, the claimant shall file an undertaking before the Tribunal to the effect that he will pursue the main claim petition filed under Section 166 of the said Act and obtain a decision thereon on merits and will not permit the said application to be withdrawn, be dismissed for default or otherwise dismissed.

5. Subject to the aforesaid observations and directions, the present appeal is summarily dismissed.

stanley-ybb.